

AMENDED IN SENATE APRIL 25, 2011

AMENDED IN SENATE APRIL 11, 2011

AMENDED IN SENATE MARCH 21, 2011

SENATE BILL

No. 412

Introduced by Senator Vargas

February 16, 2011

An act to amend Section 580e of the Code of Civil Procedure, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 412, as amended, Vargas. Mortgages: deficiency judgments.

Existing law prohibits a deficiency judgment if real property or an estate for years has been sold by the mortgagee or trustee under power of sale in the mortgage or deed of trust. Existing law also prohibits a deficiency judgment under a note secured by a first deed of trust or first mortgage for a dwelling of not more than 4 units in any case in which the trustor or mortgagor sells the dwelling for less than the remaining amount of the indebtedness due at the time of sale with the written consent of the holder of the first deed of trust or first mortgage, and provides that written consent of the holder of the first deed of trust or first mortgage to that sale obligates the holder to accept the sale proceeds as full payment and to fully discharge the remaining amount of the indebtedness on the first deed of trust or first mortgage.

This bill would delete the provisions regarding written consent of the holder of the deed of trust or mortgage obligating the holder to accept the sale proceeds as full payment, as described above. The bill would ~~instead require that, following transfer of title by an instrument recorded in the county where the real property is located and the tender of the~~

~~sale proceeds, as agreed, the rights, remedies, and obligations of the relevant parties pursuant to the instrument be treated and determined as if the dwelling had been sold through foreclosure under a power of sale contained in the deed of trust or mortgage, as specified.~~ *expand the provisions described above to prohibit a deficiency judgment upon a note secured solely by a deed of trust or mortgage for a dwelling of not more than 4 units in any case in which the trustor or mortgagor sells the dwelling for a sale price less than the remaining amount of the indebtedness outstanding at the time of sale, in accordance with the written consent of the holder of the deed of trust or mortgage if the title has been voluntarily transferred to a buyer by grant deed or by other document that has been recorded and the proceeds of the sale are tendered as agreed. The bill would also provide that, in other circumstances, when the note is not secured solely by a deed of trust or mortgage for a dwelling of not more than 4 units, no judgment shall be rendered for any deficiency upon a note secured by a deed of trust or mortgage for a dwelling of not more than 4 units, if the trustor or mortgagor sells the dwelling for a sale price less than the remaining amount of the indebtedness, in accordance with the written consent of the holder of the deed of trust or mortgage. The bill would provide, following the sale, in accordance with the written consent, the voluntary transfer of title to a buyer, as specified, and the tender of the sale proceeds, the rights, remedies, and obligations of any holder, beneficiary, mortgagee, trustor, mortgagor, obligor, obligee, or guarantor of the note, deed of trust, or mortgage, and with respect to any other property that secures the note, shall be treated and determined as if the dwelling had been sold through foreclosure under a power of sale, as specified.* The bill would except certain parties from the application of these provisions, including if the trustor or mortgagor is a limited liability company or partnership or if a public utility, as specified, made the mortgage or deed of trust. ~~The bill would make those provisions applicable to every holder of a deed of trust or mortgage rather than the holder of only the first deed of trust or first mortgage.~~ The bill would require that any waiver of these provisions is void and against public policy.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 580e of the Code of Civil Procedure is amended to read:

580e. (a) (1) *No deficiency shall be owed or collected, and no deficiency judgment shall be requested or rendered for any deficiency upon a note secured solely by a deed of trust or mortgage for a dwelling of not more than four units, in any case in which the trustor or mortgagor sells the dwelling for a sale price less than the remaining amount of the indebtedness outstanding at the time of sale, in accordance with the written consent of the holder of the deed of trust or mortgage. Following mortgage, provided that both of the following have occurred:*

(A) *Title has been voluntarily transferred to a buyer by grant deed or by other document of conveyance that has been recorded in the county where all or part of the real property is located.*

(B) *The proceeds of the sale have been tendered to the mortgagee, beneficiary, or the agent of the mortgagee or beneficiary, in accordance with the parties' agreement.*

(2) *In circumstances not described in paragraph (1), when a note is not secured solely by a deed of trust or mortgage for a dwelling of not more than four units, no judgment shall be rendered for any deficiency upon a note secured by a deed of trust or mortgage for a dwelling of not more than four units, if the trustor or mortgagor sells the dwelling for a sale price less than the remaining amount of the indebtedness outstanding at the time of sale, in accordance with the written consent of the holder of the deed of trust or mortgage. Following the sale, in accordance with the holder's written consent, the voluntary transfer of title to a buyer by grant deed or by other document of conveyance recorded in the county where all or part of the real property is located, and the tender to the mortgagee, beneficiary, or the agent of the mortgagee or beneficiary of the sale proceeds, as agreed, the rights, remedies, and obligations of any holder, beneficiary, mortgagee, trustor, mortgagor, obligor, obligee, or guarantor of the note, deed of trust, or mortgage, and with respect to any other property that secures the note, shall be treated and determined as if the dwelling had been sold through foreclosure under a power of sale contained in the deed of trust or mortgage for a price equal to the sale*

1 proceeds received by the holder, in the manner contemplated by
2 Section 580d.

3 (b) If the trustor or mortgagor commits either fraud with respect
4 to the sale of, or waste with respect to, the real property that secures
5 the deed of trust or mortgage, this section shall not limit the ability
6 of the holder of the deed of trust or mortgage to seek damages and
7 use existing rights and remedies against the trustor or mortgagor
8 or any third party for fraud or waste.

9 (c) This section shall not apply if the trustor or mortgagor is a
10 corporation, limited liability company, limited partnership, or
11 political subdivision of the state. This section shall also not apply
12 to any deed of trust, mortgage, or other lien given to secure the
13 payment of bonds or other evidence of indebtedness authorized or
14 permitted to be issued by the Commissioner of Corporations, or
15 which is made by a public utility subject to the Public Utilities Act
16 (Part 1 (commencing with Section 201) of Division 1 of the Public
17 Utilities Code).

18 (d) Any purported waiver of the provisions of subdivision (a)
19 by a person covered by this section shall be void and against public
20 policy.